

## ANALYSIS

This ordinance amends Chapter 4.72 of Title 4, Transient Occupancy Tax, of the Los Angeles County Code, relating to the tax imposed on hotel and motel occupants in the unincorporated areas of the County. This ordinance would ratify the current tax rate imposed on such occupancy at twelve percent (12%) which was adopted by ordinance by the Los Angeles County Board of Supervisors on December 18, 1990. The ordinance also clarifies the definition of a transient, and updates the persons eligible for exemption from the tax to include those referred to emergency shelters by the County or State, and employees of the Red Cross, Amtrak, the Post Office, and other agencies, travelling on official government business. This ordinance will become effective only after approval by a majority of the qualified voters in the County voting in an election on the issue.

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By   
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**ORDINANCE NO. 2012-0041**

An ordinance amending Title 4 – Revenue and Finance of the Los Angeles County Code, relating to the tax imposed on hotel and motel occupants in the County.

The Board of Supervisors of the County of Los Angeles ordains as follows:

**SECTION 1.** Chapter 4.72 of the County Code is hereby amended, and it shall read as follows:

**4.72.010 Title of chapter provisions.**

The ordinance codified in this chapter shall be known as, and may be cited as the "uniform occupancy tax ordinance."

**4.72.020 Definitions.**

Unless the context otherwise requires, the definitions in this section shall govern the construction of this chapter:

A. "Article" means an article of Ordinance 8607 as originally adopted, unless some other ordinance or statute is mentioned.

B. "Board" means the board of supervisors of the county of Los Angeles.

C. "County" means the county of Los Angeles.

D. "Hotel" means any structure in the unincorporated territory of the county, or any portion of any such structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobilehome or house trailer at a fixed location, or other similar structure or portion thereof.

E. "Occupancy" means the use or possession, or the right to the use or

possession, of any room or rooms or portion thereof in any hotel for dwelling, lodging or sleeping purposes.

F. "Operator" means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter, and shall have the same duties and liabilities as his principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

G. "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

H. "Rent" means the consideration charged, whether or not received, for the occupancy of space in a hotel, valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash credits and property and services of any kind or nature, without any deduction therefrom whatsoever.

I. "Section" means a section of this chapter.

J. "Shall" is mandatory and "may" is permissive.

K. "Tax collector" means the tax collector of the county of Los Angeles.

L. "Transient" means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of 30 consecutive calendar days or less, counting portions of calendar days



as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of 30 days has expired unless there is an agreement in writing entered into within the first 30 days of the stay between the operator and the occupant providing for a longer period of occupancy. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of the ordinance codified in this chapter may be considered.

#### **4.72.030 Interpretation of language.**

A. Tenses. The present tense includes the past and future tenses.

B. Genders. Each gender includes the other two genders.

C. Number. The singular number includes the plural and the plural the singular.

#### **4.72.040 Imposition of tax -- Amount.**

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of 12 percent of the rent charged by the operator. This tax constitutes a debt owed by the transient to the county which is extinguished only by payment to the operator or to the county.

#### **4.72.050 Payment.**

The transient shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If, for any reason the tax due is not paid to the operator of the hotel, the tax collector may require the transient to pay such tax directly to the tax collector.

#### **4.72.060 Exemptions -- Designated.**

If a proper claim for exemption is made a tax shall not be imposed upon:

A. Any person as to whom, or any occupancy as to which, it is beyond the power of the county to impose the tax provided in this chapter;

B. Any federal or state of California officer or employee, when on official business;

C. Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.

D. Emergency shelter referrals by Los Angeles County, County-affiliated, or State agencies, including - but not limited to, referrals from the Los Angeles County Department of Public Social Services, the Los Angeles County Department of Children and Family Services, the Los Angeles Homeless Services Authority, and the State Department of Corrections and Rehabilitation.

E. Any Red Cross, Amtrak, US Postal Service, Federal Credit Union or Insurance Company employee on official government business.

#### **4.72.070 Exemptions -- Claim requirements.**

The tax collector shall prepare and furnish to the operators of hotels who have registered, as required by Sections 4.72.100 through 4.72.120 of this chapter, forms by which transients may claim exemption from the payment of the tax. An exemption shall not be granted to any transient except upon a claim therefor made at the time rent is collected and under penalty of perjury upon the form supplied by the tax collector

#### **4.72.080 Collection -- Operator's duties.**

Each operator shall collect the tax imposed by this chapter to the same extent and at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of the rent charged, and each transient shall

receive a receipt for payment from the operator. The operator of a hotel shall not advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, if added, any part will be refunded except in the manner hereinafter provided.

#### **4.72.090 Recordkeeping requirements.**

Every operator liable for the collection and payment to the county of any tax imposed by this chapter shall keep and preserve, for not less than three years, all records which may be necessary to determine the amount of such tax for the collection of, and payment of, to the county he may be or may become liable. The tax collector may inspect these records at any reasonable time. The operator shall make such records available at any reasonable time requested by the tax collector.

#### **4.72.100 Operator -- Registration required.**

Within 30 days after the effective date of the ordinance codified in this chapter, or within 30 days after commencing business, whichever is later, each operator of any hotel renting occupancy to transients shall register the hotel with the tax collector. Upon such registration, the tax collector shall issue to such operator a "transient occupancy registration certificate."

#### **4.72.110 Registration certificate -- Posting.**

The operator shall post, and at all times keep posted in a conspicuous place on the premises of the hotel, the transient occupancy registration certificate.

#### **4.72.120 Registration certificate -- Contents.**

The transient occupancy certificate shall, among other things, state the following:



A. The name of the operator;

B. The address of the hotel;

C. The date upon which the certificate was issued;

D. "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Uniform Transient Occupancy Tax Ordinance by registering with the Tax Collector for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the Tax Collector. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, nor to operate a hotel without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of this county. This certificate does not constitute a permit."

**4.72.130 Tax return required monthly.**

Each operator, on or before the last day of the month following the close of the calendar quarter, or at the close of any other reporting period which may be established by the tax collector, shall make a return to the tax collector, on forms provided by him, of the total rents charged and received and the amount of tax collected for transient occupants.

**4.72.140 Payment remitted with return.**

At the time the return is filed, the operator shall remit the full amount of the tax collected to the tax collector. The tax collector may establish shorter, longer, or other reporting periods for any certificate holder if he deems it necessary or expedient in order to insure collection of the tax. The tax collector may require further information in the

return. Returns and payments are due immediately upon cessation of business for any reason.

**4.72.150 Tax held in trust.**

Every operator shall hold in trust for the account of the county, until payment thereof is made to the tax collector, all taxes collected by such operator.

**4.72.160 Late payment -- Penalty.**

Any operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of 10 percent of the amount of the unpaid tax in addition to the amount of the tax.

**4.72.170 Late payment -- Continued delinquency penalty.**

Any operator who fails to remit any delinquent remittance on or before a period of 30 days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of 10 percent of the amount of unpaid tax, in addition to the amount of the tax and the 10-percent penalty first imposed.

**4.72.180 Nonpayment due to fraud -- Penalty.**

If the tax administrator determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of 25 percent of the amount of the tax shall be added thereto in addition to the penalties stated in Sections 4.72.160 and 4.72.170.

**4.72.190 Late payment -- Interest imposed.**

In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one and one-half percent per month or fraction thereof on the amount of unpaid tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.



#### **4.72.200 Penalties merged with tax.**

Every penalty imposed and such interest as accrues under the provisions of this chapter shall become a part of the tax herein required to be paid.

#### **4.72.210 Failure to collect and report tax -- Amount determined by tax collector.**

If any operator fails or refuses to collect the tax and to make, within the time provided in this chapter, any report and remittance of said tax or any portion thereof required by this chapter, the tax collector shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the tax collector shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by this chapter and payable by any operator who has filed or refused to collect the same and to make such report and remittance, he shall proceed to determine and assess against the operator the tax, interest and penalties provided for by this chapter.

#### **4.72.220 Determination by tax collector -- Notice required.**

If the tax collector makes a determination pursuant to Sections 4.72.160 through 4.72.240 of this chapter, he shall give a notice of the amount so assessed, either by serving such notice personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of business.

#### **4.72.230 Application for hearing on amount assessed.**

Within 10 days after the serving upon any operator of such notice, such operator may apply in writing to the tax collector for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax,

interest and penalties, if any, determined by the tax collector shall become final and conclusive and immediately due and payable.

#### **4.72.240 Hearing on amount assessed -- Notice.**

If such application is made, the tax collector shall give not less than five days' written notice in the manner prescribed in this chapter to the operator to show cause at a time and place fixed in the notice why the amount specified therein should not be fixed for such tax, interest and penalties. At such hearing, the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing, the tax collector shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after 15 days unless an appeal is taken as provided in Sections 4.72.250 through 4.72.300 of this chapter.

#### **4.72.250 Appeal from tax collector determination -- Filing.**

Any operator deeming himself aggrieved by any decision of the tax collector with respect to the amount of the tax, interest and penalties, if any, may appeal to the board by filing a notice of appeal with the clerk of the board within 15 days of the serving or mailing of the determination of the tax due.

#### **4.72.260 Appeal hearing -- Notice.**

Upon the filing of a notice of appeal, the board shall fix a time and place for hearing such appeal and the clerk of the board shall give not less than five days' notice in writing, either personally or by United States mail, postage prepaid.

#### **4.72.270 Appeal hearing -- Appointment of referee.**

The board may appoint a referee to take testimony at any hearing provided for in Sections 4.72.250 through 4.72.300 of this chapter, and to report his findings and recommendations to the board. Neither the tax collector nor any officer or employee in the office of the tax collector may be appointed referee.

#### **4.72.280 Appeal hearing -- Compensation of referee.**

If the board appoints a county officer or county employee to act as referee, he shall serve as such without any additional compensation. All time spent as a referee shall be considered as time spent by such officer or employee in performing the duties of his position.

#### **4.72.290 Appeal hearing -- Conduct.**

At the time set for the hearing, or at the date to which the hearing may be continued by the board or referee, the board or referee shall hear the appellant and any other competent witnesses and decide whether the determination of the tax collector was correct or not, and if not what tax, interest or penalties, if any, are due to the county from the appellant. The board or referee may place any witnesses, including the appellant, under oath.

#### **4.72.300 Appeal hearing -- Final determination.**

The board shall determine from the evidence or from the report of the referee, what tax, interest or penalties, if any, are due to the county from the appellant. This decision shall be final and conclusive. The clerk of the board shall serve a copy of the decision upon the appellant as provided in Section 4.72.260. Any amount due shall be



immediately due and payable upon the service of the said notice.

**4.72.310 Refunds -- Claim filing requirements.**

Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the county under this chapter, the operator so paying may have such amount applied to subsequent taxes due, or it may be refunded as provided in Sections 4.72.310 through 4.72.350 of this chapter if, within three years after the date of payment, the operator files with the tax collector in writing a claim therefor. In such claim the operator shall state, under penalty of perjury, the specific grounds and specific facts upon which the claim is founded. The claims shall be on forms furnished by the tax collector.

**4.72.320 Refunds -- Credited to operator when.**

An operator may take as credit against subsequent taxes the amount overpaid, paid more than once, or erroneously or illegally collected or received when it is established in a manner prescribed by the tax collector that the person from whom the tax was collected was not a transient and the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.

**4.72.330 Refunds -- Paid to operator when.**

When an operator establishes a right to a credit as provided in Sections 4.72.310 through 4.72.350 of this chapter and also shows to the satisfaction of the tax collector either that he no longer is operating a hotel in the unincorporated territory of the county or will cease such operation before the credit can be applied, and files a proper claim therefor, in lieu of such credit the county shall refund to such operator the amount

overpaid, paid more than once or erroneously or illegally collected or received.

**4.72.340 Refunds -- Paid to guests when.**

A transient or other guest of a hotel may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the county by filing a claim in the manner provided in Section 4.72.310, if the tax was paid by the transient or other guest directly to the tax collector, or if the transient or other guest has paid the tax to the operator, and establishes to the satisfaction of the tax collector that the transient or other guest has been unable to obtain a refund from the operator who collected the tax.

**4.72.350 Refunds -- Written records required.**

A refund shall not be paid pursuant to Sections 4.72.310 through 4.72.350 of this chapter unless the claimant establishes his right thereto by written records showing that he is entitled thereto.

**4.72.360 Tax deemed debt to county.**

Any tax required to be paid by any transient under the provisions of this chapter shall be deemed a debt owed by the transient to the county.

**4.72.370 Collected tax deemed debt by operator.**

Any tax collected from a transient by an operator pursuant to the provisions of this chapter which has not been paid to the county shall be deemed a debt owed by the operator to the county.

**4.72.380 Actions to collect authorized when.**

The tax collector, in the name of the county of Los Angeles, as plaintiff, may bring suit for the recovery of any tax, interest or penalty due to the county pursuant to

the provisions of this chapter.

**4.72.390 Acts deemed misdemeanors designated.**

Every person is guilty of a misdemeanor who:

- A. Fails or refuses to register as required by this chapter;
- B. Fails or refuses to furnish any return required to be made, or fails or refuses to furnish a supplemental return or other data required by the tax collector;
- C. Renders a false or fraudulent return;
- D. If required by this chapter to make, render, sign or verify any report or claim, makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due;
- E. Collects the tax due pursuant to this chapter from any transient and fails to pay the same to the county;
- F. Violates in any way any other provision of this chapter.

**4.72.400 Violation -- Penalty.**

Violation of any provisions of this chapter is punishable by a fine of not more than \$500.00 or by imprisonment in the County Jail for not more than six months, or by both such fine and imprisonment.

**4.72.410 Reference to chapter or statutes.**

Whenever any reference is made to any portion of the ordinance codified in this chapter or of any other ordinance, or to any statute, such reference shall apply to all amendments and additions thereto now or hereafter made.

**4.72.420 Severability.**

~~If any provision of this chapter, or the application thereof to any person or~~



~~circumstance is held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances, shall not be affected thereby.~~ If any provision of this ordinance, or any part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this ordinance are severable.

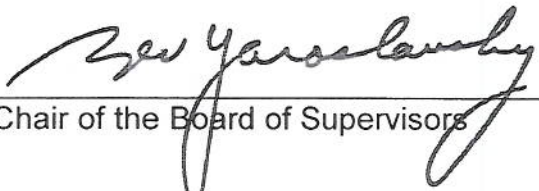
**4.72.430 Ratification of Prior Tax.**

The voters of the county of Los Angeles hereby ratify and approve the past collection of the "uniform occupancy tax ordinance" under Chapter 4.72 as amended by Ordinance No. 90-0180, which was adopted by the Los Angeles County Board of Supervisors on December 18, 1990.

**SECTION 2. Execution.** The Chair of the Board of Supervisors is authorized to attest to the adoption of this Ordinance by the voters of the County at the Election of June 5, 2012, by signing a certification as provided below:

I hereby certify that the foregoing Ordinance was PASSED, APPROVED and ADOPTED by the people of the County of Los Angeles voting on the 5<sup>th</sup> day of June 2012.



  
Chair of the Board of Supervisors

[472010ARCC]

I hereby certify that pursuant to  
Section 25103 of the Government Code,  
delivery of this document has been made.

SACHI A. HAMAI  
Executive Officer  
Clerk of the Board of Supervisors

ATTEST: SACHI A. HAMAI  
EXECUTIVE OFFICER  
CLERK OF THE BOARD OF SUPERVISORS

By , Deputy